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5 BROOKS HENDERSON HADEN

6  
7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10 IRETA IRBY

11 Plaintiff,

12 vs.

13 BROOKS HENDERSON HADEN

14 Defendants.  
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) No. 3:08-c-80004-PJH

)

) **NOTICE OF MOTION AND MOTION**

) **OF DEFENDANT BROOKS HADEN**

) **FOR ORDER VACATING JANUARY 11,**

) **2008 REGISTRATION OF FOREIGN**

) **JUDGMENT AND FOR PERMANENT**

) **INJUNCTION AGAINST**

) **ENFORCEMENT OF THE TEXAS**

) **JUDGMENT IN CALIFORNIA.**

)

) Date: May 14, 2008

) Time: 9:00 a.m.

) Crtm: 3, 17<sup>th</sup> Floor

) Hon. Phyllis J. Hamilton

)

)

)

22 **TO THE COURT, TO PLAINTIFF IRETA IRBY THROUGH HER COUNSEL OF**  
23 **RECORD, TO THE UNITED STATES MARSHAL, AND TO MECHANICS BANK:**

24 **PLEASE TAKE NOTICE** that defendant Brooks Haden does hereby apply to the Court  
25 for an order (1) vacating the registration of plaintiff's Texas Judgment and (2) permanently enjoining plaintiff  
26 from enforcing the Texas judgment in California. The grounds for the motion are that the registration of the  
27 Texas judgment in the Northern District of California on January 11, 2008 was erroneous and must be  
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**NOTICE OF MOTION TO VACATE JUDGMENT**  
**AND FOR PERMANENT INJUNCTION.**

**Case No. 3:08-c-80004-PJH**

1 vacated because the California judgment on the underlying debt expired as of August 20, 2006 and was never  
2 renewed in accordance with California law.

3 This Motion is made based upon this Memorandum, the Declaration of Malcolm Leader-  
4 Picone with attached exhibits filed concurrently, as well as upon judicial notice of the Court's file with respect  
5 to the original registration of the Texas judgment under this Court's Case No. 3:96-fj-000034-VRW, and  
6 upon such other and further evidence and argument as may be adduced prior to any ruling on the Motion.

7 Defendant asks leave to file these moving papers after the April 4, 2008 deadline specified in  
8 the Court's minutes and the Order filed April 2, 2008, because defendant was required in the interim to  
9 respond to an application for an order shortening time and a motion to amend the judgment in the Bankruptcy  
10 Court, which plaintiff filed on April 1, 2008, but which was received by defendant's counsel on April 2, 2008.  
11 Copies of the application for an order shortening time, and the memoranda in support of and opposition to the  
12 motion to amend the bankruptcy court judgment are attached to the accompanying Declaration of Malcolm  
13 Leader-Picone as exhibits.

14 DATED: April 11, 2008.

BARTLETT, LEADER-PICONE & YOUNG, LLP

16 BY: /s/ Malcolm Leader-Picone #104620  
MALCOLM LEADER-PICONE  
17 Attorneys for Defendant  
BROOKS HENDERSON HADEN

**MOTION FOR ORDER VACATING REGISTRATION OF JUDGMENT ON JANUARY 11, 2008 AND FOR PERMANENT INJUNCTION**

**I. PRELIMINARY STATEMENT.**

Plaintiff Ireta Irby allowed her California judgment registered in this Court on August 20, 1996, based upon a Texas judgment, to expire. Consequently, plaintiff is not permitted another California judgment on the same claim through her registration of the Texas judgment for a second time. Defendant Brooks Haden seeks an order from this Court (1) vacating the second registration of the Texas judgment; and (2) permanently enjoining plaintiff from any further attempts to enforce the Texas judgment in California.

Although plaintiff has a Texas judgment which is enforceable in Texas, plaintiff is bound by California law as far as enforcement of her judgment in California. Under indisputable California law, the judgment was not renewed and, therefore, it can no longer be enforced in California.

**II. STATEMENT OF FACTS.**

The following facts are taken from the Declaration of Rhonda L. Nelson Regarding Post-Judgment Interest on Registered Judgment from Another District, filed on January 29, 2008 in this action (“*Nelson Decl.*”)<sup>1</sup>, and the Declaration of Malcolm Leader-Picone (“*Leader-Picone Decl.*”) filed concurrently with this Memorandum:

1. On November 17, 1988, plaintiff Ireta Irby obtained a judgment against defendant Brooks Haden in the United States District Court for the Southern District of Texas (“Texas Judgment”). See, *Exh. “A” to Nelson Decl.*, a courtesy copy of which is being served with this Application.

2. On August 20, 1996, plaintiff registered the Texas Judgment in the Northern District of California. See, *Exh. “A” to the Leader-Picone Decl.* The registered judgment, which will be referred to herein as the California Judgment, was assigned to Judge Walker with the case number 3:96-fj-00034-VRW.

3. The California Judgment was never renewed and expired by operation of law on August 20, 2006, ten years after it came into existence.

4. On January 10, 2008, plaintiff obtained a new Certification of Judgment for

<sup>1</sup> For the Court’s convenience, a copy of Ms. Nelson’s Declaration is submitted as an exhibit to this Motion.

1 Registration in Another District from the United States District Court for the Southern District of Texas. See,  
2 *Exh. "C" to the Nelson Decl.*

3 5. The Clerk of this Court registered the Texas Judgment for a second time on January  
4 11, 2008, under case number 3:08-mc-80004-PJH and assigned the case to the Hon. Phyllis J. Hamilton.  
5 See, *Exh. "C" to the Nelson Decl.*

6 6. On January 29, 2008, plaintiff's counsel filed the Nelson Declaration in support of  
7 issuance of a Writ of Execution. The Nelson Declaration does not disclose that the Texas Judgment had been  
8 registered in California on August 20, 1996 and expired by operation of law on August 20, 2006.

9 7. According to the Court's docket for this action, a Writ of Execution was entered on  
10 March 3, 2008; and an Earnings Withholding Order was issued on March 7, 2008. See, *Exh. "B" to the*  
11 *Leader-Picone Decl.*

12 8. On April 1, 2008, after this Court heard arguments on defendant's application for  
13 temporary restraining order on March 31, 2008, and it became clear to plaintiff's counsel that this Court may  
14 well declare the Texas judgment unenforceable in California, plaintiff filed an application for an order  
15 shortening time and a motion to amend the bankruptcy court judgment that is set to expire on April 28, 2008.  
16 Plaintiff expressly cited this pending proceeding to enjoin the enforcement of the Texas judgment as grounds  
17 for her motion.

### 18 **III. ARGUMENT.**

19 Plaintiff's California judgment expired by operation of law. The expired California judgment  
20 cannot be brought back to life by means of a second registration of the Texas judgment. Plaintiff has to play  
21 by the same rules governing California judgment as every other judgment creditor in California. Consequently,  
22 the second registration of the Texas judgment must be vacated and all further efforts of the plaintiff to enforce  
23 the Texas Judgment in California must be permanently restrained.

#### 24 **A. REGISTRATION OF THE TEXAS JUDGMENT ON** 25 **AUGUST 20, 1996 CREATED A CALIFORNIA JUDGMENT** 26 **WITH A TEN YEAR DURATION.**

27 Pursuant to Section 1963 of Title 28, a judgment entered in one District Court can be  
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1 registered in another District Court:

2 A judgment in an action for the recovery of money or property entered in any . .  
3 . district court . . . may be registered by filing a certified copy of the judgment in  
4 any other district . . . in any judicial district, when the judgment has become final  
5 . . . . 28 U.S.C. § 1963.

6 In addition, Rule 69 of the Federal Rules of Civil Procedure requires that, except as otherwise  
7 provided by statute, district courts must follow state practice regarding the collection and enforcement of  
8 judgments. *Ortland v. County of Tehama*, 939 F. Supp. 1465, 1473 (E.D. Cal. 1996). Together, these  
9 statutes establish a federal policy that district courts must follow and respect the forum state's laws governing  
10 enforcement of judgments. Thus, judgment creditors holding judgments issued by a federal district court must  
11 follow the same rules governing their judgment as all other judgment creditors in the forum state.

12 In this case, federal law dictates that California law (not Texas law, as plaintiff tries to argue)  
13 governs the enforceability of the two judgments that plaintiff registered in this Court. As to those, the Ninth  
14 Circuit has clearly and directly pronounced how the federal statute for registration of judgment from other  
15 districts interacts with California statutes governing enforcement of judgments, and in particular with the  
16 California statute of limitations on enforcement of a judgment (*Cal. Code Civ. Proc.*, § 683.020 (formerly §  
17 681)). In the case of *Marx v. Go Publishing Company*, 721 F.2d 1272 (9th Cir. 1983), the Ninth Circuit  
18 held that a registration under 28 U.S.C. section 1963 creates a "new judgment" for statute of limitations  
19 purposes, which the judgment creditor has ten years from the date of registration in which to enforce the  
20 judgment under California law.

21 In *Marx*, the judgment creditor obtained a judgment against Go Publishing in 1971 in the  
22 United States District Court for the District of Columbia. In 1980, Marx registered the judgment in the United  
23 States District Court for the Central District of California, pursuant to 28 U.S.C. section 1963. In 1982, Marx  
24 commenced proceedings in the District Court for the Central District of California to enforce the judgment.  
25 Go Publishing resisted enforcement and argued a statute of limitations defense under Code of Civil Procedure  
26 section 681.<sup>2</sup> The district court rejected that argument, and the Ninth Circuit, in affirming the district court's  
27 ruling, analyzed the situation as follows:

28 <sup>2</sup> The current statute now is Code of Civil Procedure section 683.020.

1 The California period of limitations for enforcement of judgments is ten years.  
 2 *See Cal. Code Civ. Proc.* § 681. Go Publishing invoked the statute as a bar  
 3 to the proceedings. The issue is whether registration under 28 U.S.C. § 1963  
 4 creates a new judgment for statute of limitations purposes, giving the judgment-  
 5 creditor ten years from the date of registration in which to satisfy the judgment.  
 6 Under analogous California law, the ten year period for a valid and enforceable  
 7 judgment of a sister state runs anew from the time of its filing in the state  
 8 superior court, provided that at the time of registration the judgment is not then  
 9 time barred and other requisites of the statute are fulfilled. [Citations.] Go  
 10 Publishing argues, however, that this state rule is inapplicable where a district  
 11 court judgment is registered under the federal statute. We disagree.

12 The California statute provides for registration of judgments of sister states, and  
 13 the provisions of 28 U.S.C. § 1963 are its federal analogue. **We discern no**  
 14 **reason why the statute of limitations rule of the state should not apply to**  
 15 **the federal proceeding. The registration of the district court judgment**  
 16 **under 28 U.S.C. § 1963, the judgment not then being time barred, *Cal.***  
 17 ***Code Civ. Proc.* § 337.5, commenced anew the running of the applicable**  
 18 **statute, which is *Cal. Code Civ. Proc.* § 681. *Id.* at 1273; emphasis added.**

19 In applying *Marx* to the present case, it cannot be contested that the registration of the Texas  
 20 Judgment of August 20, 1996 created a new California judgment. That California judgment was subject to all  
 21 California laws governing enforcement of judgments, including the rules governing the duration and renewal of  
 22 California judgments. Thus, in *Marx*, the Ninth Circuit held that the judgment in that case had a ten year  
 23 lifespan under California Code of Civil Procedure section 681, the predecessor to California Code of Civil  
 24 Procedure section 683.020, from the date of registration in the District Court.

25 Similarly, in *Epps v. Russell*, 62 Cal.App.3d 201 (1976), cited by the Ninth Circuit in *Marx*,  
 26 the judgment creditor registered his Texas judgment in a California superior court under the Sister State and  
 27 Foreign Money Judgments Act (*Cal. Code Civ. Proc.*, §§ 1710.10-1710.65). The court held that the  
 28 issuance of a California judgment under the Sister State and Foreign Money Judgments Act created a new  
 judgment that was then entitled to the ten year statute of limitations for enforcement of judgments under  
 California law.

In this case, Ms. Irby's California Judgment, obtained on August 20, 1996, likewise had a ten  
 year lifespan in California from the date of registration, in accordance with California Code of Civil Procedure  
 section 683.020.

**B. PLAINTIFF FAILED TO RENEW HER CALIFORNIA JUDGMENT WITHIN 10 YEARS, SO IT IS NOW UNENFORCEABLE, AND ENFORCEMENT MUST CEASE.**

California Code of Civil Procedure section 683.020 provides:

Except as otherwise provided by statute, **upon the expiration of 10 years after the date of entry of a money judgment** or a judgment for possession or sale of property:

(a) **The judgment may not be enforced**

(b) **All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.**

(c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished. (Emphasis added.)

Under the plain language of section 683.020, absent an renewal of the California Judgment, prior to August 20, 2006, after August 20, 2006, the judgment could not be enforced and all enforcement procedures pursuant to the judgment had to cease.

If this seems a harsh result, it must be kept in mind that, under Rule 69 of the Federal Rules of Civil Procedure, and in accordance with the *Marx* case, plaintiff could have renewed her California judgment at any time before it expired, utilizing the mechanism set forth in California Code of Civil Procedure section 683.110 and following.<sup>3</sup> Upon application, a California judgment can be renewed for successive terms of 10 years. *Cal. Code Civ. Proc.*, § 683.120.<sup>4</sup> The application to renew the judgment must be filed “before the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.” *Cal. Code Civ. Proc.*, § 683.130(a).

There is nothing at all that prevented plaintiff from utilizing the procedures made available by California law to keep her California Judgment alive and enforceable. So, what happened here? Obviously, either Ms. Irby or her lawyer forgot to calendar the expiration date of the California judgment that they had

<sup>3</sup> “The period of enforceability of a money judgment or a judgment for possession or sale of property may be extended by renewal of the judgment as provided in this article.” *Cal. Code Civ. Proc.*, § 683.110(a).

<sup>4</sup> “(a) The judgment creditor may renew a judgment by filing an application for renewal of the judgment with the court in which the judgment was entered. ¶ (b) Except as otherwise provided in this article, the filing of the application renews the judgment in the amount determined under Section 683.150 and extends the period of enforceability of the judgment as renewed for a period of 10 years from the date the application is filed. . . .” *Cal. Code Civ. Proc.*, § 683.120.



1 obtained in 1996. Regardless of the cause of this situation, and the law leaves Ms. Irby and her counsel to  
 2 sort that one out, the California Judgment was not renewed and it is not enforceable now and it all  
 3 enforcement activities must cease immediately.

4 **C. PLAINTIFF IS NOT PERMITTED TO AVOID THE**  
 5 **RUNNING OF THE STATUTE OF LIMITATIONS ON**  
 6 **ENFORCEMENT OF HER JUDGMENT BY OBTAINING A**  
 7 **NEW JUDGMENT.**

8 Plaintiff argues vociferously that she is not attempting to enforce the California Judgment, that  
 9 is the judgment created by registration on August 20, 1996. Instead, plaintiff claims, she is enforcing a new  
 10 judgment based upon the January 11, 2008 registration of the Texas judgment. If California Code of Civil  
 11 Procedure section 683.020 was not clear enough that the Texas Judgment, as registered in California, could  
 12 not be enforced and all enforcement procedures pursuant to the judgment had to cease, then California Code  
 13 of Civil Procedure section 683.050 should doom plaintiff's end-run around her failure to renew her judgment.

14 California Code of Civil Procedure section 683.050 permits a separate action to enforce a  
 15 judgment to be filed at any time within the same ten year window as section 683.020. Section 683.050 is,  
 16 depending on your perspective and the circumstances, a permitted alternative to renewal of a California  
 17 judgment or an end-run around the renewal procedure. Thus, in *Barkley v. City of Blue Lake* (1993) 18  
 18 Cal.App.4<sup>th</sup> 1745, 1749, when the judgment creditor failed to enforce the judgment within 10 years, and also  
 19 did not renew the judgment, he was permitted to file a separate action to enforce the judgment prior to the  
 20 expiration of the 10 year statute of limitation. In *Barkley*, the California Court of Appeal held that a separate  
 21 action to enforce the judgment was a viable alternative to renewal of the judgment, provided that the separate  
 22 action was filed within the 10 year period, citing *Pratali v. Gates* (1992) 4 Cal.App.4<sup>th</sup> 632, 636-637.

23 *Pratali* held:

24 A separate action on the judgment is expressly authorized in section 683.050 [of the  
 25 Code of Civil Procedure] which states: "Nothing in this chapter limits any right the  
 26 judgment creditor may have to bring an action on a judgment, but any such action  
 27 shall be commenced within the period prescribed by Section 337.5." . . . The  
 28 lawmakers did not intend the provisions to renew a judgment every 10 years to  
 replace the then sole existing method of bringing an action on a judgment to retain the  
 enforceability of a judgment. . . . [¶] [Instead], this alternate method to extend the life  
 of a judgment was expressly authorized by statute and is proper in this case if the  
 action on the judgment was filed within the 10-year period of limitations prescribed in  
 section 337.5. *Pratali, supra*, at 637-638.



Plaintiff's best argument is that the second registration of the Texas Judgment was analogous to plaintiff suing to obtain a second judgment by a separate action on the same liability. Arguably, California law may have permitted the plaintiff to register the Texas Judgment for a second time as if bringing a separate action on the judgment under section 683.050 and *Barkley* and *Pratali*. However, as section 683.050 and those cases make crystal clear, the separate action (or second registration in this case) must occur before the running of the ten year period of the statute of limitations. In other words, a second registration of the Texas judgment would have to have occurred within ten years from the registration of the California Judgment on August 20, 1996.

Even if plaintiff were able to analogize to section 683.050, and *Barkley* and *Pratali*, *supra*, those authorities dictate that plaintiff was too late to obtain a second registration of the Texas Judgment in California on January 11, 2008, which was 509 days after the ten years had run out on August 20, 2006. Consequently, the Court must vacate the January 11, 2008 registration of the Texas Judgment, and order the cessation of all enforcement activities.

**D. CALIFORNIA LAW GOVERNS THE ENFORCEABILITY OF PLAINTIFF'S JUDGMENT IN CALIFORNIA.**

Plaintiff argues that the Texas judgment remains enforceable in Texas and, therefore, it should still be enforceable in California. However, the only authorities before the Court dictate that California law, not Texas law, governs whether a registered foreign judgment remains enforceable in this state.

Although 28 U.S.C. § 1963 permits the registration of a judgment in another district, nothing in section 1963, nor in any case cited to the Court permits a second registration of the same judgment. Rule 69 of the Federal Rules of Civil Procedure dictates that district courts must follow state practice regarding the collection and enforcement of judgments. *Ortland v. County of Tehama*, 939 F. Supp. 1465, 1473 (E.D. Cal. 1996).<sup>5</sup>

Both *Marx v. Go Publishing Company*, 721 F.2d 1272 (9th Cir. 1983), and *Gagan v. Sharar*, 376 F.3d 987 (9<sup>th</sup> Cir. 2004), cited by plaintiff in opposition to defendant's application for a

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<sup>5</sup> Defendant has analogized above that a second registration of the judgment within the ten year statute of limitations is akin to a separate action on the judgment under California law, which is arguably permissible under Rule.

1 temporary restraining order, stand for the proposition that this Court must look to California law, and  
2 California law alone, to determine whether the judgment remains enforceable. As quoted from footnote 3 in  
3 *Gagan* in plaintiff's opposition, 28 *U.S.C.* § 1963 requires that the Court enforce plaintiff's judgment in  
4 exactly the same manner as the Court would enforce any California judgment:

5 "A judgment so registered shall have the same effect as a judgment of the district  
6 court of the district where registered and **may be enforced in like manner.**" 376  
F.3d at 989 fn. 3, quoting 28 *U.S.C.* § 1963; emphasis added.

7 Thus, by federal statute and Ninth Circuit precedent, it is California law (not Texas law, as  
8 plaintiff tries to argue) that governs the enforceability of the judgment that plaintiff registered in this Court. In  
9 opposition to the temporary restraining order, plaintiff proffered no case or statutory authority that holds that  
10 the law of the forum state where a registered judgment originated controls the enforcement of the judgment,  
11 rather than the state in which enforcement is to occur. Indeed, plaintiff essentially admitted that California law  
12 governed the enforcement of the judgment when she attempted to renew the bankruptcy court judgment last  
13 year, and when she sought to amend the bankruptcy court judgment to include the money judgment.

14 Plaintiff asks the Court to turn the *Marx* case on its head. Under the *Marx* case, a foreign  
15 judgment that has not expired in the home state, can be registered in California and, thereby, obtain the benefit  
16 of the full ten year statute of limitations of a new California judgment. However, nothing in *Marx* says that the  
17 judgment creditor can take the benefit of a new 10 year period of enforceability under California law, and then  
18 when that ten years expires avoid the California expiration of that judgment by registering the Texas judgment  
19 a second time.

20 Plaintiff argues that she is faced with a situation in which her Texas judgment has been  
21 renewed and can be registered and then enforced in any state of the Union; and that should include California.  
22 However, plaintiff ignores the fact that her argument would mean that this Court would treat plaintiff differently  
23 from all other California judgment creditors, when Rule 69, 28 *U.S.C.* § 1963, and the Ninth Circuit have all  
24 dictated that a holder of a judgment from an out-of-state district must have the same opportunity and means to  
25 enforce her judgment as a "home grown" California judgment creditor.

26 What plaintiff wants is for this Court to give her a free pass on the failure to follow California  
27 law and renew her judgment before it expired after ten years. That would give this plaintiff special treatment  
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1 and consideration that no other judgment creditor in California would be entitled to. Indeed, a California  
2 judgment creditor could not take an expired California judgment to Texas and expect the Texas courts to  
3 enforce it. Why should a Texas litigant be permitted to have a “Lazarus” judgment that can come back to life  
4 by repeated registrations in California, when all other California litigants have to remember to renew their  
5 judgment?

6 In this case, Ms. Irby’s California Judgment, obtained on August 20, 1996, had a ten year  
7 lifespan in California from the date of registration, in accordance with California Code of Civil Procedure  
8 section 683.020. The judgment expired by operation of law on August 20, 2006 when plaintiff failed to renew  
9 it. There is no law or policy that would countenance giving plaintiff more opportunity and rights to enforce her  
10 California judgment than any other California judgment holder. Accordingly, this Court must find that plaintiff  
11 no longer can enforce her Texas judgment in California.

12 **E. DEFENDANT IS ENTITLED TO A PERMANENT**  
13 **INJUNCTION PREVENTING PLAINTIFF FROM ANY**  
14 **FURTHER ATTEMPT TO ENFORCE HER JUDGMENT IN**  
**CALIFORNIA.**

15 The granting or denying of injunctive relief “rests within the sound discretion of the trial court.”  
16 *SEC v. Goldfield Deep Mines Co. of Nevada*, 758 F.2d 459, 465 (9<sup>th</sup> Cir. 1985) (citing *SEC v. Arthur*  
17 *Young & Co.*, 590 F.2d 785, 787 (9<sup>th</sup> Cir. 1979)). The likelihood that the challenged violation of laws will be  
18 repeated in the future provides grounds for issuance of a permanent injunction. See, e.g. *SEC v. Fehn*, 97  
19 F.3d 1276, 1295-1296 (9<sup>th</sup> Cir. 1996), upholding permanent injunction against future violations of the aider  
20 and abettor provisions of the securities laws.

21 Plaintiff has demonstrated with her numerous trips back and forth between the district court  
22 and the bankruptcy court that she will never stop attempting to enforce her Texas judgment against Mr.  
23 Haden in California, even if to do so violates the federal and state statutes governing enforcement of  
24 judgments. Without an injunction, it can reasonably be inferred that plaintiff and her counsel will seek some  
25 other avenue, no matter if inappropriate, to try and enforce the Texas judgment in California. Therefore,  
26 defendant strenuously requests entry of a permanent injunction putting an end to all efforts to enforce the  
27 Texas judgment in California.

1 **IV. CONCLUSION.**

2 The bottom line is that plaintiff's belated attempt to keep her judgment alive in California by  
3 this deceptive second registration, was too little too late. Plaintiff registered her Texas Judgment with the  
4 District Court for the Northern District of California on **August 20, 1996**. Since the California period of  
5 limitations for enforcement of judgment under Code of Civil Procedure section 683.020 is ten years, plaintiff  
6 had, under *Marx*, until **August 20, 2006** to file her renewal of judgment, or file a new action on the judgment  
7 or, possibly, even to re-register her Texas Judgment. However, it is undisputed that plaintiff failed to do so  
8 since her second registration of the Texas Judgment was filed on **January 11, 2008, seventeen months**  
9 **after the statute had run!** Based on the foregoing authorities plaintiff was time barred from enforcing her  
10 judgment in California through her own fault. Therefore, the registration of the Texas judgment must be  
11 vacated and all enforcement stopped.

12 Respectfully submitted,

13 DATED: April 11, 2008.

BARTLETT, LEADER-PICONE & YOUNG, LLP

14  
15 BY: **/s/ Malcolm Leader-Picone #104620**  
MALCOLM LEADER-PICONE  
16 Attorneys for Defendant  
BROOKS HENDERSON HADEN  
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**PROOF OF SERVICE**

I, Malcolm Leader-Picone, declare that:

I am employed in the County of Alameda, California. I am over the age of eighteen years and not a party to the within action. My business address is 2201 Broadway, Suite 803 Oakland, CA 94612.

On April 11, 2008, I served the following document(s) entitled:

**NOTICE OF MOTION AND MOTION OF DEFENDANT BROOKS HADEN FOR ORDER  
VACATING JANUARY 11, 2008 REGISTRATION OF FOREIGN JUDGMENT AND FOR  
PERMANENT INJUNCTION AGAINST ENFORCEMENT OF THE TEXAS JUDGMENT IN  
CALIFORNIA**

upon the following person(s) in said action as follows:

**By Email and UPS Overnight:**

Rhonda I. Nelson, Esq.  
Severson & Werson  
One Embarcadero Center, Suite 2600  
San Francisco, CA 94111

Telephone: 415-398-3344  
Facsimile: 415-956-0439  
Email: [rln@severson.com](mailto:rln@severson.com)

**Chambers Copy By UPS Overnight:**

Hon. Phyllis J. Hamilton  
U.S. District Court Judge  
U.S. District Court, Crtrm. 3, 17th Floor  
U.S. Courthouse/Phillip Burton Building  
450 Golden Gate Avenue  
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Oakland, California, on April 11, 2008.

**/s/ Malcolm Leader-Picone #104620**

Malcolm Leader-Picone

RHONDA L. NELSON (State Bar No. 116043)  
SEVERSON & WERSON  
A Professional Corporation  
One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
Telephone: (415) 398-3344  
Facsimile: (415) 956-0439  
  
Attorneys for Plaintiff  
IRETA IRBY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT  
SAN FRANCISCO DIVISION

IRETA IRBY,

Plaintiff,

vs.

BROOKS HENDERSON HADEN,

Defendant.

CASE NO. CV 08-80004MISC-PJH

DECLARATION OF RHONDA L.  
NELSON REGARDING POST-  
JUDGMENT INTEREST ON  
REGISTERED JUDGMENT FROM  
ANOTHER DISTRICT  
28 U.S.C. §1961. [CCP §685]

I, Rhonda L. Nelson, declare and state:

1. I am a member of the law firm of Severson & Werson, attorneys of record for Ireta Irby ("Judgment Creditor") in this matter, and am duly licensed before all courts in the State of California. I make this declaration on behalf of the Judgment Creditor to set out the amount of post-judgment interest which has accrued on the Judgment which was renewed on September 25, 1996, February 25, 1999, and January 10, 2008. I am authorized by the Judgment Creditor to make this declaration.

2. On November 21, 1988, the United States District Court for the District of Texas entered judgment in favor of Ireta Irby and against Brooks Henderson Haden. The original

1 balance of the judgment was for \$87,450.00. A copy of that Judgment is attached hereto as  
2 Exhibit "A".

3 3. The Judgment has been renewed under the requirements of Texas law under Acts 1985  
4 § 34.001 (a copy of which is attached as Exhibit B) which requires only that a Writ of Execution  
5 be issued once every ten (10) years. Writs of execution were issued on September 25, 1996, and  
6 February 25, 1999. The Judgment from United States District Court for the Southern District of  
7 Texas was Certified on January 10, 2008, by that Court and registered in this Court on January 11,  
8 2008.

9  
10 4. On January 10, 2008, the United States District Court for the Southern District of  
11 Texas Certified its judgment for registering it in this district. A copy of the Certified Judgment is  
12 attached hereto as Exhibit "C" and is incorporated herein.

13  
14 5. Interest on the Judgment is determined by under 28 U.S.C. § 1961. The rate of interest  
15 is calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-  
16 year constant maturity Treasury yield, as published by the Board of Governors of the Federal  
17 Reserve System, for the calendar week preceding the date of the judgment.

18  
19 6. The rate of interest applicable as of November 10, 1988, pursuant to the Treasury  
20 Department historic rates is 8.15%. This would apply to a judgment entered on November 17,  
21 1988. A copy of the table from which the interest rate is determined is attached as Exhibit "D".

22 7. Interest is compounded annually as allowed by law. *Kaiser Aluminum & Chem. Corp.*  
23 *v. Bonjorno* 494 U.S. 827, 831-832 (1990).

24  
25 8. Interest has accrued as follows:



Rate	Beg Date	End Date	Days Between	Daily Rate	Accrued Interest*	Balance Compounded Annually (28 U.S.C. § 1961)
	11/17/1988	11/17/1988	0		\$0.00	\$87,450.00
8.15%	11/17/1988	11/17/1989	365	\$19.53	\$7,127.18	\$94,577.18
8.15%	11/17/1989	11/17/1990	365	\$21.12	\$7,708.04	\$102,285.21
8.15%	11/17/1990	11/17/1991	365	\$22.84	\$8,336.25	\$110,621.46
8.15%	11/17/1991	11/17/1992	366	\$24.70	\$9,040.35	\$119,661.81
8.15%	11/17/1992	11/17/1993	365	\$26.72	\$9,752.44	\$129,414.25
8.15%	11/17/1993	11/17/1994	365	\$28.90	\$10,547.26	\$139,961.51
8.15%	11/17/1994	11/17/1995	365	\$31.25	\$11,406.86	\$151,368.37
8.15%	11/17/1995	11/17/1996	366	\$33.80	\$12,370.32	\$163,738.69
8.15%	11/17/1996	11/17/1997	365	\$36.56	\$13,344.70	\$177,083.39
8.15%	11/17/1997	11/17/1998	365	\$39.54	\$14,432.30	\$191,515.69
8.15%	11/17/1998	11/17/1999	365	\$42.76	\$15,608.53	\$207,124.22
8.15%	11/17/1999	11/17/2000	366	\$46.25	\$16,926.87	\$224,051.09
8.15%	11/17/2000	11/17/2001	365	\$50.03	\$18,260.16	\$242,311.26
8.15%	11/17/2001	11/17/2002	365	\$54.11	\$19,748.37	\$262,059.62
8.15%	11/17/2002	11/17/2003	365	\$58.51	\$21,357.86	\$283,417.48
8.15%	11/17/2003	11/17/2004	366	\$63.28	\$23,161.81	\$306,579.29
8.15%	11/17/2004	11/17/2005	365	\$68.46	\$24,986.21	\$331,565.50
8.15%	11/17/2005	11/17/2006	365	\$74.03	\$27,022.59	\$358,588.09
8.15%	11/17/2006	11/17/2007	365	\$80.07	\$29,224.93	\$387,813.02
8.15%	11/17/2007	1/18/2008	62.00	\$86.59	\$5,368.82	\$393,181.84
				TOTAL ACCRUED INTEREST	\$305,731.84	

9. Previously, defendant Brooks H. Haden filed a Chapter 7 Bankruptcy petition in the Northern District of California in the Santa Rosa Division as Case No. 96-13933 AJ. Plaintiff Irby filed a nondischargeability action against Haden. On April 17, 1998, the Hon. Alan J. Jaroslovsky issued an order determining that the Texas Judgment in favor of Irby is non-dischargeable. A copy of that judgment is attached hereto as Exhibit "E" and incorporated herein.

10. In that Judgment for non-dischargeability, the United States Bankruptcy Court ordered costs of \$685.20.

1 11. Ireta Irby applies for a writ of execution in the sum of \$ 393,867.04 of this amount  
2 \$305,731.84 represents accrued interest since November 17, 1988, and \$685.20 represents  
3 awarded costs.

4  
5 12. Judgment Debtor Brooks Henderson Haden has paid no part of the interest or principal  
6 owed on this judgment.

7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct.

9 Executed on the 29th day of January 2008, at San Francisco, California.

10  
11  
12 /s/ Rhonda L. Nelson  
Rhonda L. Nelson

# **EXHIBIT A**

# **EXHIBIT A**

CLERK, U. S. DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

FILED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISIONJESSE E. CLARK, CLERK  
BY DEPUTY

IRETA IRBY

VS.

BROOKS H. HADEN

X  
X  
X  
X  
X

CIVIL ACTION NO. H-88-1781

JUDGMENT

On this day came on to be heard Plaintiff's Motion for Default Judgment in the above styled cause, and it appearing to the court that Defendant, though duly summoned to appear and answer herein, has wholly failed to appear and answer herein, that appearance day for Defendant has passed, and that Plaintiff's cause of action is based upon a liquidated demand, the court finds that Plaintiff is entitled to judgment by default as prayed for.

It is ORDERED, ADJUDGED, and DECREED that Plaintiff, IRETA IRBY, recover from Defendant, BROOKS H. HADEN, Judgment in the total sum of \$87,450.00 (which includes Plaintiff's principal claim of \$75,000.00, plus pre-judgment interest on the principal claim of \$4,500.00, plus attorney's fees of \$7,950.00) together with interest at the legal rate on the total amount from the date of this Judgment until paid, and for all costs of court spent in this cause, for all of which let execution issue.

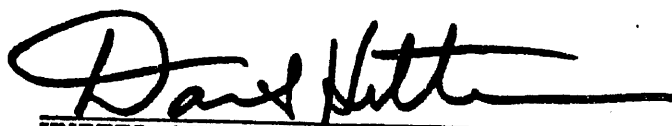
DONE at Houston, Texas this 17 day of Nov., 1988.

TRUE COPY I CERTIFY

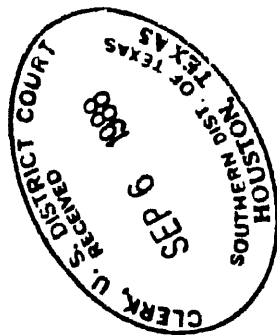
ATTEST:

MICHAEL N. MILBY, CLERK

By [Signature]  
Deputy Clerk

  
UNITED STATES DISTRICT JUDGE

2008



CLERK, U. S. DISTRICT COURT  
RECEIVED DOCKET SECTION  
HOUSTON, TEXAS  
SOUTHERN DISTRICT OF TEXAS

NOV 21 1988

PM

1, 2, 3, 4, 5, 6

# **EXHIBIT B**

# **EXHIBIT B**



§ 34.001. NO EXECUTION ON DORMANT JUDGMENT. (a) If a writ of execution is not issued within 10 years after the rendition of a judgment of a court of record or a justice court, the judgment is dormant and execution may not be issued on the judgment unless it is revived.

(b) If a writ of execution is issued within 10 years after rendition of a judgment but a second writ is not issued within 10 years after issuance of the first writ, the judgment becomes dormant. A second writ may be issued at any time within 10 years after issuance of the first writ.

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

# EXHIBIT C

# EXHIBIT C

AO 451 (Rev. 12/93) Certification of Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

IRETA IRBY

V.

BROOKS H. HADEN

CERTIFICATION OF JUDGMENT  
FOR REGISTRATION IN  
ANOTHER DISTRICT

CV

08

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00

4

Case Number: H -88-1781

I, MICHAEL N. MILBY Clerk of the United States district court certify that the attached judgment is a true and correct copy of the original judgment entered in this action 11/17/1988, as it appears in the records of this court, and that no notice of appeal from this judgment has been filed, and no motion of any kind listed in Rule 4(a) of the Federal Rules of Appellate Procedure has been filed.

PJH

IN TESTIMONY WHEREOF, I sign my name and affix the seal of this Court.

JAN 10 2008

Date

Michael N. Milby

Clerk

(By) Deputy Clerk

\*Insert the appropriate language: ...“no notice of appeal from this judgment has been filed, and no motion of any kind listed in Rule 4(a) of the Federal Rules of Appellate Procedure has been filed.” ...“no notice of appeal from this judgment has been filed, and any motions of the kinds listed in Rule 4(a) of the Federal Rules of Appellate Procedure (†) have been disposed of, the latest order disposing of such a motion having been entered on [date].” ...“an appeal was taken from this judgment and the judgment was affirmed by mandate of the Court of Appeals issued on [date].” ...“an appeal was taken from this judgment and the appeal was dismissed by order entered on [date].”

(† Note: The motions listed in Rule 4(a), Fed. R. App. P., are motions: for judgment notwithstanding the verdict; to amend or make additional findings of fact; to alter or amend the judgment; for a new trial; and for an extension of time for filing a notice of appeal.)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

## WRIT OF EXECUTION

To the UNITED STATES MARSHAL for the Southern District of Texas.

UNITED STATES COURT  
SOUTHERN DISTRICT OF TEXAS  
FILED

In Civil Action Number

H-88-1781

FEB 25 1999

In this Division

Houston

MICHAEL N. MILBY, CLERK OF COURT

Which was styled:

Ireta Irby

- versus -

Brooks H. Haden

This judgment creditor:

Ireta Irby

Recovered a judgment of

\$ 87,450.00

Plus costs of

\$ -0-

Which judgment was entered on

11-17-88

And bears interest at

8.55

%

From this judgment debtor:

Brooks H. Haden

You are commanded to take of the goods, land and choses-in-action of the judgment debtor enough to pay the judgment in full and the costs of this writ. Fail not, and return this writ, certifying how you executed it.

United States District Court  
Southern District of Texas

Michael N. Milby, Clerk

By:

MICHAEL N. MILBY

Deputy Clerk

Date Issued: FEB 25 1999

4487444

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

Ireta Irby

versus

Brooks H. Haden

§  
§  
§  
§  
§  
§  
§  
§  
§

CASE NO. H-88-1781

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

FEB 25 1999

EC

## ABSTRACT OF JUDGMENT

MICHAEL N. MILBY, CLERK OF COURT

Date Judgment Entered:	11-17-88
Judgment in Favor of:	Ireta Irby -- Plaintiff
Judgment Against:	Brooks H. Haden -- Defendant
Amount of Judgment:	\$ 87,450.00
Amount of Costs:	\$ -0-
Rate of Interest:	8.55 %
Amount of Credits Since Judgment:	\$ -0-
Amount Due:	\$ 162,219.80

The above and foregoing is a correct Abstract of Judgment entered in the United States District Court, for the Southern District of Texas, in the above-captioned case.

MICHAEL N. MILBY, Clerk

DATED: FEB 25 1999 By:



Deputy Clerk

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

FILED

11-17-88

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JESSIE R. CLARK, CLERK  
BY DEPUTY

IRETA IRBY

VS.

BROOKS H. HADEN

X  
X  
X  
X  
X

CIVIL ACTION NO. H-88-1781

JUDGMENT

On this day came on to be heard Plaintiff's Motion for Default Judgment in the above styled cause, and it appearing to the court that Defendant, though duly summoned to appear and answer herein, has wholly failed to appear and answer herein, that appearance day for Defendant has passed, and that Plaintiff's cause of action is based upon a liquidated demand, the court finds that Plaintiff is entitled to judgment by default as prayed for.

It is ORDERED, ADJUDGED, and DECREED that Plaintiff, IRETA IRBY, recover from Defendant, BROOKS H. HADEN, Judgment in the total sum of \$87,450.00 (which includes Plaintiff's principal claim of \$75,000.00, plus pre-judgment interest on the principal claim of \$4,500.00, plus attorney's fees of \$7,950.00) together with interest at the legal rate on the total amount from the date of this Judgment until paid, and for all costs of court spent in this cause, for all of which let execution issue.

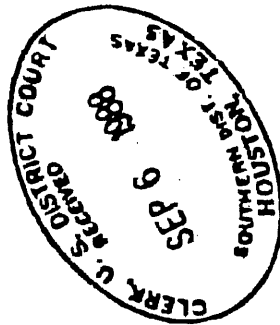
DONE at Houston, Texas this 17 day of Nov, 1988.

TRUE COPY I CERTIFY  
ATTEST:  
MICHAEL N. MILBY, CLERK  
By L. Guzman  
Deputy Clerk

  
UNITED STATES DISTRICT JUDGE

2008





CLERK, U. S. DISTRICT COURT  
RECEIVED DOCKET SECTION  
HOUSTON, TEXAS  
SOUTHERN DISTRICT OF TEXAS

NOV 21 1988

PM

1 1 2 3 4 5 6



## SHORT TITLE:

Irby v. Haden

CASE NUMBER FOREIGN JUDGMENT  
96 034 VRW  
(U.S.D.C. So. Dist. Texas)

-Items continued from the first page-

4. ☐ Additional judgment debtor (name and last known address):

7. ☐ Notice of sale has been requested by (name and address):

8. ☐ Joint debtor was declared bound by the judgment (CCP 989-994)

a. on (date):

b. name and address of joint debtor:

a. on (date):

b. name and address of joint debtor:

- c. ☐ additional costs against certain joint debtors (itemize):

9. ☐ (Writ of Possession or Writ of Sale) Judgment was entered for the following:

- a. ☐ Possession of real property: The complaint was filed on (date):

(Check (1) or (2)):

- (1) ☐ The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46.

The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.

- (2) ☐ The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(a) \$ \_\_\_\_\_ was the daily rental value on the date the complaint was filed.

(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify):

- b. ☐ Possession of personal property

☐ If delivery cannot be had, then for the value (itemize in 9e) specified in the judgment or supplemental order.

- c. ☐ Sale of personal property

- d. ☐ Sale of real property

- a. Description of property:

## - NOTICE TO PERSON SERVED -

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying Notice of Levy.

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

► A Claim of Right to Possession to ( ) companies this writ (unless the Summons is served in compliance with CCP 415.46).

Irby v. Haden

Foreign Judgment 96 034 VRM

ATTACHMENT TO WRIT OF EXECUTION (Money Judgment)

Name of Court: The United States District Court for the Northern District of California is the name of the court in which the foreign judgment has been registered as foreign judgment number 96 034 VRM to enforce a judgment originally entered in the United States District Court for the Southern District of Texas, Houston Division in case number H-88-1781. The address of the District Court in the Southern District of Texas is: Bob Casey Federal Building, 151 Rusk Avenue, Houston, Texas 77002.

Item 3: The address of the judgment creditor is:

403 Quail Lane  
Ruston, LA 71270

Item 5: The Judgment for the amount of \$87,450.00 was entered in the United States District Court for the Southern District of Texas, Houston Division, on November 17, 1988.

The "Certification of Judgment for Registration in Another District," certifying the Judgment, was filed in the United States District Court for the Northern District of California on August 14, 1996 as foreign judgment number 96 034 VRM.

# **EXHIBIT D**

# **EXHIBIT D**

Equivalent Coupon Yield	Date of Auction	Equivalent Coupon Issue Yield	Date of Auction	Equivalent Coupon Issue Yield
6	08/29/85	7.91%	05/31/90	8.24%
6	09/26/85	7.87%	06/28/90	8.09%
6	10/24/85	8.08%	07/26/90	7.88%
6	11/26/85	7.87%	08/23/90	7.95%
6	12/19/85	7.57%	09/20/90	7.78%
6	01/16/86	7.85%	10/26/90	7.51%
6	02/13/86	7.71%	11/15/90	7.28%
6	03/13/86	7.06%	12/13/90	7.02%
6	04/10/86	6.31%	01/10/91	6.62%
6	05/13/86	6.56%	02/12/91	6.21%
6	06/05/86	7.03%	03/07/91	6.46%
6	07/08/86	6.35%	04/04/91	6.26%
6	07/31/86	6.18%	05/02/91	6.07%
6	08/28/86	5.63%	05/30/91	6.09%
6	09/25/86	5.79%	06/27/91	6.39%
6	10/23/86	5.75%	07/25/91	6.26%
6	11/20/86	5.77%	08/22/91	5.68%
6	12/23/86	5.93%	09/19/91	5.57%
6	01/15/87	5.75%	10/17/91	5.42%
6	02/12/87	6.09%	11/14/91	4.98%
6	03/12/87	6.04%	12/12/91	4.41%
6	04/09/87	6.30%	01/09/92	4.02%
6	05/12/87	7.02%	02/06/92	4.21%
6	06/04/87	7.00%	03/05/92	4.58%
6	07/02/87	6.64%	04/02/92	4.55%
6	08/04/87	6.98%	04/30/92	4.40%
6	09/01/87	7.22%	05/28/92	4.26%
6	09/30/87	7.88%	06/25/92	4.11%
6	10/22/87	6.90%	07/23/92	3.51%
6	11/19/87	6.93%	08/20/92	3.41%
6	12/17/87	7.22%	09/17/92	3.13%
6	01/14/88	7.14%	10/15/92	3.24%
6	02/11/88	6.59%	11/17/92	3.76%
6	03/10/88	6.71%	12/10/92	3.72%
6	04/07/88	7.01%	01/07/93	3.67%
6	05/05/88	7.20%	02/04/93	3.45%
6	06/02/88	7.59%	03/04/93	3.21%
6	06/30/88	7.54%	04/06/93	3.37%
6	07/28/88	7.95%	04/30/93	3.25%
6	08/25/88	8.32%	05/27/93	3.54%
6	09/22/88	8.04%	06/24/93	3.54%
6	10/20/88	8.15%	07/22/93	3.55%
6	11/17/88	8.55%	08/19/93	3.43%
6	12/15/88	9.20%	09/16/93	3.40%
6	01/12/89	9.16%	10/14/93	3.38%
6	02/15/89	9.32%	11/16/93	3.57%
6	03/09/89	9.43%	12/09/93	3.61%
6	04/06/89	9.31%	01/06/94	3.67%
6	05/04/89	9.15%	02/03/94	3.74%
6	06/01/89	8.85%	03/03/94	4.22%
6	06/29/89	8.16%	03/31/94	4.51%
6	07/27/89	7.75%	04/28/94	5.02%
6	08/24/89	8.27%	5/26/94	5.28%
6	09/21/89	8.19%	6/23/94	5.31%
6	10/19/89	7.90%	7/21/94	5.49%
6	11/16/89	7.69%	8/18/94	5.67%
6	12/14/89	7.66%	9/15/94	5.69%
6	01/11/90	7.74%	10/13/94	6.06%
6	02/13/90	7.97%	11/10/94	6.482%
6	03/08/90	8.36%	12/08/94	7.22%
6	04/05/90	8.32%	1/5/95	7.34%
6	05/03/90	8.70%	2/2/95	7.03%

Complete Annotation Materials, see Title 28 U.S.C.A.

# EXHIBIT E

# EXHIBIT E



1 LOFTON, De LANCIE & NELSON  
2 NICOLAS De LANCIE (State Bar No. 84934)  
3 RHONDA L. NELSON (State Bar No. 116043)  
4 505 Montgomery Street, Suite 1550  
5 San Francisco, California 94111-2584  
6 Telephone: (415) 772-1900

7 Attorneys for Plaintiff  
8 IRETA IRBY

ORIGINAL FILED

APR 27 1998

KEENAN G. CASADY, CLERK  
U.S. Bankruptcy Court-Santa Rosa

9 UNITED STATES BANKRUPTCY COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SANTA ROSA DIVISION

12 In re

13 BROOKS H. HADEN,

14 Debtor.

) Case No. 96-13933 AJ  
) Chapter 7

15 IRETA IRBY,

16 Plaintiff,

) Adversary No. 97-1034-AJ

17 v.

18 BROOKS H. HADEN,

19 Defendant.

20  
21  
22 JUDGMENT

23  
24 This action came on regularly for trial on April 14, 1998, in the United States  
25 Bankruptcy Court for the Northern District of California, Santa Rosa Division, the Honorable  
26 Alan Jaroslovsky presiding. Rhonda L. Nelson of Lofton, De Lancie & Nelson appeared with  
27 plaintiff Ireta Irby. Iain A. Macdonald and Kaipo K.B. Young of the Law Offices of Iain A.  
28 Macdonald appeared with defendant Brooks H. Haden.

JUDGMENT  
96077 Judgement

ENTERED APR 28 1998

Page 1

COPY

1 After hearing the evidence and arguments of counsel, judgment is hereby  
2 entered in this action against debtor and defendant Brooks H. Haden ("Haden") in favor of  
3 plaintiff Ireta Irby ("Irby") determining that Irby's Judgment against Haden, entered on  
4 November 17, 1988, in the United States District Court for the Southern District of Texas,  
5 Civil Action No. H-88-1781, is deemed nondischargeable pursuant to Bankruptcy Code  
6 Section 523(a)(2)(A). Irby shall recover her costs of suit in the amount of \$685.20.

7 Dated: APR 27 1998

8  
9 **ALAN JAROSLOVSKY**

10 ALAN JAROSLOVSKY  
11 United States Bankruptcy Judge  
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PROOF OF SERVICE

I, the undersigned, declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 505 Montgomery Street, Suite 1550, San Francisco, California 94111. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, at San Francisco, California, I served the following document(s), entitled JUDGMENT, by placing copies of said document(s) in sealed envelopes and served in the manner(s) described below on the addressee(s) listed below.

☒ (By Mail) I placed such envelope(s) for collection and mailing at my employer's San Francisco office following ordinary business practices, addressed to the addressee(s) designated.

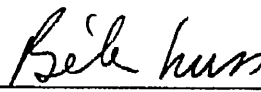
☐ (By Federal Express) I caused such envelope(s) to be delivered by Federal Express overnight courier to the addressee(s) designated.

☐ (By Hand Delivery) I caused such envelope(s) to be delivered by hand to the addressee(s) designated.

☐ (By Facsimile) I transmitted copies of the referenced document(s) via facsimile to the telephone number(s) of the addressee(s) designated.

Iain A. Macdonald, Esq.  
Law Offices of Iain A. Macdonald  
Two Embarcadero Center, Suite 1670  
San Francisco, CA 94111-3930

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 20, 1998, in San Francisco, California.

  
Béla Nuss

## **POST JUDGEMENT INTEREST RATES**

Interest is allowed on most judgments entered in the federal courts from the date of judgment until paid. The types of judgments generally fall under one of three statutes: 28 U.S.C. 1961, which governs civil and bankruptcy adversary judgment interest; 18 U.S.C. 3612 (f)(2), which governs criminal judgments or sentences; and 40 U.S.C. 3116, which governs deficiency judgments in condemnation proceedings. These statutory references should be checked with reliable statutory data bases such as Westlaw, Lexis, or other appropriately maintained sources of the U.S. Code for the latest changes.

Under each of the above statutes the rate of interest used in calculating the amount of post judgment interest is the weekly average 1-year constant maturity (nominal) Treasury yield, as published by the Federal Reserve System. Prior to December 21, 2000 the rate of interest allowed under the statutes cited above was based on the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 week t-bills settled immediately preceding entry of the judgment. The way the rate is used differs under each of the cited statutes, so those sections should be reviewed to determine how to apply it to any particular judgment.

### **Current Applicable Rates**

The current rate applicable under these sections is provided by the Federal Reserve and published each Monday for the preceding week (unless that day is a holiday in which case the rate is published on the next business day).

The specific rate referred to in the statutes is found in the table under the two columns headed WEEK ENDING. The two dates under those columns refer to the Friday averages of the last two weeks. Under those columns you need to go down to the row which states U.S. government securities - Treasury constant maturities nominal<sup>10</sup> - 1-year. Where the row and columns meet - that is the rate you use.

Prior current rates also are available by selecting the week preceding the date of judgment (or the date interest would otherwise apply under the above) and selecting the release date preceding the date of judgment. NOTE: if your judgment date is the same as the release date, you should select the prior week's release. REASON: the releases are considered to be issued at the close of business on the date of release.

### **Rates Prior to December 21, 2000**

Rates under the prior language were based on the average accepted auction price for the latest auction of 52 week t-bills.